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EXAMINER
PIERCE, DAMON JOSEPH

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>12 November 2009</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>21,23,25,29,31,32,35-37 and 40-42</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>21, 23, 25, 29, 31-32, 35-37, and 40-42</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .
5)☐ Notice of Informal Patent Application
6)☐ Other: _____ .

DETAILED ACTION

Election/Restrictions

1.   Applicant's election with traverse of the species corresponding to Fig. 5 in the

reply filed on 11/2/09 is acknowledged. The traversal is on the ground(s) that because

the election requirement does not address claims 23 and 25; and no additional burden

would be assumed by examining and searching the claims of the identified species.

Please note: claims 23 and 25 were erroneously left out of the requirement and are

viewed as generic claims. Additionally, the remarks that no additional burden would be

assumed by examining and searching the claims of the identified species is not found

persuasive because the species would require searching different electronic resources

and employing different search queries.

      The requirement is still deemed proper and is therefore made FINAL.

Response to Amendment

2.   The examiner acknowledges the amendments of claims filed on 8/31/09 and

11/12/09. Currently, due to election of claims 21, 23, 25, 29, 31-32, 35-37, and 40-42

are pending.

Claim Rejections - 35 USC § 112

3.   The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of
> making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the
> art to which it pertains, or with which it is most nearly connected, to make and use the same and shall
> set forth the best mode contemplated by the inventor of carrying out his invention.

4.   Claims 21, 23, 25, 29, 31-32, 35-37, and 40-42 are rejected under 35 U.S.C. 112,

first paragraph, as failing to comply with the written description requirement. The

claim(s) contains subject matter which was not described in the specification in such a

way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the

time the application was filed, had possession of the claimed invention. Specifically, the

claims include the following recitations, and as best understood each recitation is

provided with corresponding interpretations according to the original specification:

- "first zone" and "inner zone": `distance is below len1 (see Fig. 5)`

- "reference place": `Fig. 5, element 52`

- "second zone": `among the candidates whose distances are in the`
  `range of above len1 but below len2 (>len1) (see Fig. 5)`

- "outer zone": `the others whose distances were not below len1`
  `(see Fig. 5)`

- "present moment of time": `real time (parg. 26)`

- "current value": `current parameter value (parg. 55)`

- "parameter below a first predetermined value": `a parameter value of the`
  `candidate t was below len1 before a prescribed period of`
  `time (parg. 71).`

- "said present time": `a prescribed period of time (parg. 11)`

- "first predetermined value": `prescribed distance (parg. 12) such as`
  `len1 or par1 (parg. 59),`

- "second predetermined value": `prescribed distance (parg. 12) such as len2 or par2 (parg. 59),` and

- "recommended order of selection": `selection order (see abstract).`

Claim Rejections - 35 USC § 103

5.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1.   Determining the scope and contents of the prior art.
2.   Ascertaining the differences between the prior art and the claims at issue.
3.   Resolving the level of ordinary skill in the pertinent art.
4.   Considering objective evidence present in the application indicating obviousness or nonobviousness.

6.   Claims 21, 23, 25, 29, 31-32, 35-37, and 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Falcon 4.0 game manual (herein referred to as Falcon).

Regarding claims 21, 23, 25, 31, 35, 36, 40, 41, Falcon discloses a game program computer readably stored in a storage medium and configured to cause a computer to:

(a) **provide an action game space in which a player character moves in a game space in response to an operation of a game player and in which a plurality of target characters move in the game space as attack targets to be attackable from the player character** (Chapter 4, "Air-to-Air Weapons" and pps. BM-25 to BM-26, discloses that Falcon is a flight simulator computer game having an aircraft as the player character that moves in the game space using a radar display, and other game objects such as targets and/or enemies planes as other characters, for example see pg. 4-3, Head-Up Display, HUD, pg. 4-5 and Fig. 13-6, "HUB Scan ACM Submode");

(b) **set a parameter with respect to each of said target characters at every time when the player character moves in the game space, said parameter being defined based on a distance from a reference place set in said game space and indicating that the target character having the smaller of the parameter value is more suitable to be attackable from the game character** (Pg. 4-2 to 4-3, discloses Air Combat Maneuvering, ACM, radar modes are used to lock the radar onto aircraft that are within visual range, where the visual range is determined by distance from the player's aircraft, in this case, the enemy characters having the closest or smallest distance to the player's aircraft are more suitable to attack first because they are the most likely to attack the player character first);

(c) **set a first zone in front of the player character, a second zone set outside of the first zone, and an outer zone set outside of the second zone, wherein at least some of the target characters are configured to move in and out between the first and second zones and between the second zone and the outer**

**zone while the game player tries to attack the target characters, wherein the first
zone is defined such that any target character within the first zone is attackable
from the player character, the second zone is defined such that any target
character within the second zone is conditionally attackable from the player
character, and the outer zone is defined such that any target character outside
the second zone is not attackable by the player** (Pg. 4-2, discloses radar modes,
some radar modes are for use within visual range and others are for beyond visual
range, for example, pg. 4-6 discloses BVR (Beyond Visual Range), also note, weapon
ranges are based on distances, for example, see pg. 4-25, discloses SRM (short-range
missile), and MRM (Medium-Range Missile), and pg. 21-25, discloses long-range radar-
guided missiles, thus, there are instances where a target is available for an attack, and
safe from an attack based on distances and positions relative to a player aircraft, note
pg. 4-8 provides specific examples of ranges in terms of miles);

(d) **judge a current value of the parameter with respect to each of said
plurality of target characters** (the video game inherently tracks the distance and
space between game character and other objects) and decide:

(d-l) **that any target character is currently in the first zone and it is one of
selectable candidate objects to be attackable at the present moment of time if it
has a current value of the parameter below a first predetermined value** (any targets
within weapon distance range are attackable by the player aircraft);

(d-2) **that any target character is currently in the second zone and it is one
of selectable candidate objects to be attackable at said present time if it has a**

current value of the parameter between the first predetermined value and a
second predetermined value set larger than said first predetermined value but
excluding any target character which has then moved in from the outer zone
within a certain period of time (any targets within weapon distance range(s) are
attackable by the player aircraft and any targets outside the weapon distance range(s)
are safe from an attack); and

(d-3) that any target is currently in the outer zone and not selectable to
attack at said present time if it has a current value of the parameter larger than
said second predetermined value (any targets outside the weapon distance range(s)
are safe from an attack); and

(e) decide a recommended order of selection to be attacked among those
of said plurality of selectable candidate objects in said first and second zones, in
accordance with the current values of parameters at said present time so that the
selectable candidate object having the smaller value of parameter is given with
the higher priority in deciding the order (lacking distinguishing features, see pps. 4-
13 to 4-14 discloses the radar immediately locking onto the first targets it sees, and
allowing the player to cursor through targets to select, lock, and attack a target of
his/her choice, targets selection order is based the order in which target objects appear
within the radar screen of the player's aircraft, in this case, the selection order is
decided by the which objects are closest to the player's aircraft);

(f) indicate such recommended order of selection to the respective
candidate objects in said first and second zones displayed on a monitor display

connected to the computer (pps. 4-13 to 4-14 discloses targets are visually displayed

within the radar screen of the player aircraft);

(g) **allow the player to change, by selecting one after the other in**

accordance with the decided selection order, the status of the selected one of

said plurality of target characters as the target currently attackable, thereby to

sequentially change the attackable target in response to operation by the game

player (pg. 4-14, discloses where the player can manually select the order in which

he/she wants to attack targets).

29, 32, 37, 42, Falcon discloses a game program according to claim 21,

wherein said reference place is set at a point at which the player character

is currently located in said game space (pg. 4-2, in this case, the reference place

is the player aircraft nose), and

wherein said current values of the parameters are decided based on

distances of the target characters from said point set as the reference place,

respectively (pg. 4-8, where distances are determined from the player aircraft

nose).

Response to Arguments

7.   Applicant's arguments with respect to claims 21, 23, 25, 29, 31-32, 35-37, and

40-42 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8.   Applicant's amendment necessitated the new ground(s) of rejection presented in
this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP
§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37
CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE
MONTHS from the mailing date of this action. In the event a first reply is filed within
TWO MONTHS of the mailing date of this final action and the advisory action is not
mailed until after the end of the THREE-MONTH shortened statutory period, then the
shortened statutory period will expire on the date the advisory action is mailed, and any
extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of
the advisory action. In no event, however, will the statutory period for reply expire later
than SIX MONTHS from the date of this final action.

9.   Any inquiry concerning this communication or earlier communications from the
examiner should be directed to DAMON PIERCE whose telephone number is (571)270-
1997. The examiner can normally be reached on 8AM-4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's
supervisor, Dmitry Suhol can be reached on 571-272-4430. The fax phone number for
the organization where this application or proceeding is assigned is 571-273-8300.

10.   Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dmitry Suhol/
Supervisory Patent Examiner, Art
Unit 3714

DJP